

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JIMMIE STEPHEN,

No. 2:20-cv-1003 KJM KJN P

Petitioner,

v.

WARDEN G. MATTESON,

ORDER and FINDINGS AND  
RECOMMENDATIONS

Respondent.

I. Introduction

Petitioner is a state prisoner, proceeding without counsel. Respondent moves to dismiss the petition on the grounds that petitioner's challenge to the 2019 denial of parole fails to state a cognizable federal habeas claim.<sup>1</sup> Petitioner filed an opposition, and respondent filed a reply. As set forth below, the undersigned recommends that the motion to dismiss be denied.

II. Background

Petitioner was arrested on June 6, 1989. (ECF No. 1 at 18.) Following a jury trial, on April 10, 1991, petitioner was sentenced to 35 years to life with the possibility of parole based on his conviction of second degree murder (15 years to life), plus 20 years due to enhancements.

---

<sup>1</sup> Respondent was relieved of any obligation to respond to petitioner's allegations concerning the 2015 denial of parole because petitioner's prior challenge to the 2015 denial of parole was found barred by the statute of limitations. Stephen v. Fox, No. 2:19-cv-0528 MCE EFB (E.D. Cal. Feb. 5, 2020).

1 (ECF No. 1 at 2, 11, 18.) The additional 20 years were based on the following sentencing  
2 enhancements: two years for the personal use of a firearm, 15 years for three prior serious felony  
3 convictions, and three years for three prior prison terms. In re Jimmie Stephen, Petitioner, On  
4 Habeas Corpus, Case No. BH011082 (Los Angeles Co. Super. Ct. March 14, 2017). See Stephen  
5 v. Fox, No. 2:19-cv-0528 MCE EFB (ECF No. 14-6 at 1).<sup>2</sup>

6 The Board of Parole Hearings (hereafter “Board”) set petitioner’s base term at 19 years.  
7 (ECF No. 1 at 1, 4, 15.)

8 On December 5, 2019, at an elderly parole hearing, petitioner was denied parole for a  
9 period of three years. (ECF No. 1 at 13, 14.)

10 III. Legal Standards

11 Rule 4 of the Rules Governing Section 2254 Cases allows a district court to dismiss a  
12 petition if it “plainly appears from the face of the petition and any exhibits annexed to it that the  
13 petitioner is not entitled to relief in the district court. . . .” Id.; see also White v. Lewis, 874 F.2d  
14 599, 602-03 (9th Cir. 1989) (Rule 4 permits meritorious motions to dismiss). In addition, the  
15 Advisory Committee Notes to Rule 8 of the Rules Governing Section 2254 Cases indicate that the  
16 court may dismiss a petition for writ of habeas corpus: on its own motion under Rule 4; pursuant  
17 to the respondent’s motion to dismiss; or after an answer to the petition has been filed. See, e.g.,  
18 Miles v. Schwarzenegger, No. 2:07-cv-1360 LKK EFB, 2008 WL 3244143, at \*1 (E.D. Cal.  
19 Aug. 7, 2008) (dismissing habeas petition pursuant to respondent’s motion to dismiss for failure to  
20 state a claim). However, a petition for writ of habeas corpus should not be dismissed without  
21 leave to amend unless it appears that no tenable claim for relief can be pleaded were such leave  
22 granted. Jarvis v. Nelson, 440 F.2d 13, 14 (9th Cir. 1971). Accordingly, the court reviews  
23 respondent’s motion to dismiss pursuant to its authority under Rule 4.

24 ////

25 \_\_\_\_\_  
26 <sup>2</sup> A court may take judicial notice of court records. See, e.g., Bennett v. Medtronic, Inc., 285  
27 F.3d 801, 803 n.2 (9th Cir. 2002) (“[W]e may take notice of proceedings in other courts, both  
within and without the federal judicial system, if those proceedings have a direct relation to  
matters at issue”) (internal quotation omitted).

28

1     IV. Is the 2019 Parole Challenge Cognizable?

2           Petitioner claims that the 2019 decision to find petitioner not suitable for release on parole  
3 after he had served 31 years, several years beyond his base term of 19 years, renders his sentence  
4 disproportionate in violation of the Eighth Amendment’s prohibition against cruel and unusual  
5 punishment. (ECF No. 1 at 5, 18-56.) Respondent contends such claim is not cognizable because  
6 there is no clearly established federal law that failure to find an indeterminately sentenced adult  
7 offender suitable for parole renders a sentence disproportionate.

8           As noted above, the petition should only be dismissed on a motion to dismiss if it “plainly  
9 appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the  
10 district court . . . .” Rule 4, Rules Governing Section 2254 Cases. Here, petitioner did not  
11 provide a copy of the parole hearing transcript, and respondent argues the merits of petitioner’s  
12 claim. (See ECF No. 10 at 2-4.) Respondent does not show that the claim is not cognizable in  
13 this habeas action. A claim that a sentence is disproportionate to the crime is actionable under the  
14 Eighth Amendment. See, e.g., Ewing v. Davis, 538 U.S. 11, 20 (2003) (Eighth Amendment  
15 contains a “narrow proportionality principle” that “applies to noncapital sentences.” (Citations  
16 omitted.)). While it is true that “successful challenges to the proportionality of particular  
17 sentences should be exceedingly rare,” *id.* at 22 (citing Hutto v. Davis, 454 U.S. 370, 374 (1982)),  
18 “the fact that petitioner may face a high hurdle to succeed on his claim does not mean that he has  
19 not stated one.” Drakeford v. Lizaraga, 2:17-cv-1571 MCE DB, 2018 WL 1083888, at \*1 (E.D.  
20 Cal. Feb. 28, 2018), report and recommendation adopted, 2:17-cv-1571 KJM DB, 2018 WL  
21 1693448 (E.D. Cal. Apr. 6, 2018) (denial of parole by the Board on the grounds that it renders  
22 sentence so long it violates the Eighth Amendment states a cognizable claim; motion to dismiss  
23 denied); Zaccardi v. Arnold, No. 2:17-cv-1405 MCE KJN, 2018 WL 2328886 (E.D. Cal. May 23,  
24 2018) (same). Respondent should be ordered to answer the petition.

25     V. Request to Take Judicial Notice

26           In light of the above recommendations, petitioner’s request for judicial notice is denied  
27 without prejudice.

28     ////

1 VI. Conclusion

2 Accordingly, IT IS HEREBY ORDERED that petitioner's request for judicial notice (ECF  
3 No. 13), construed as a motion, is denied without prejudice.

4 Further, IT IS RECOMMENDED that:

5 1. Respondent's motion to dismiss (ECF No. 10) be denied; and  
6 2. Respondent be directed to file an answer within thirty days.

7 These findings and recommendations are submitted to the United States District Judge  
8 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
9 after being served with these findings and recommendations, any party may file written  
10 objections with the court and serve a copy on all parties. Such a document should be captioned  
11 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the  
12 objections shall be served and filed within fourteen days after service of the objections. The  
13 parties are advised that failure to file objections within the specified time may waive the right to  
14 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

15 Dated: October 28, 2020

16   
17 KENDALL J. NEWMAN  
18 UNITED STATES MAGISTRATE JUDGE

19 /step1003.mtd.hc.12b6.parole

20  
21  
22  
23  
24  
25  
26  
27  
28